

Internal Revenue Service

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Person To Contact:

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Refer Reply To:

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PLR-131565-11

Date:

December 08, 2011

Legend

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Shareholder =

Person =

Business A =

Business B =

State A =

State B =

Date 1 =

Date 2 =

Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
<u>a</u>	=
<u>b</u>	=
<u>c</u>	=
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z =

aa =

Dear :

This letter responds to your letter dated July 26, 2011, and subsequent correspondence, in which you requested rulings regarding certain Federal income tax consequences of a series of proposed transactions (the "Proposed Transactions"). The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has reviewed no information pertaining to, and has made no determination regarding whether the Distribution (defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see section 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in Distributing or Controlled (see section 355(e) and § 1.355-7), provided that for purposes of Ruling (8), we have assumed that any acquisitions of stock that result or are deemed to result from (a) the replication of the Proxy Arrangement with respect to the Controlled stock, (b) the Open Market Repurchases (other than any such acquisitions of stock deemed to be by Person or Shareholder) or (c) except with respect to Person or Shareholder, the receipt of cash in lieu of fractional shares in connection with the Reverse Stock Split (as such capitalized terms are defined below) are, in each case, acquisitions of stock that are part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the Distribution.

SUMMARY OF FACTS

Distributing is a publicly traded State A corporation and the common parent of an affiliated group of corporations (including Sub 1 and Sub 2) that file a consolidated Federal income tax return. Distributing is engaged, through its subsidiaries, in Business A and Business B.

Distributing has three classes of stock outstanding: Distributing Common Stock, Distributing Class B Common Stock and Distributing Preferred Stock. Holders of Distributing Common Stock, Distributing Class B Common Stock and Distributing Preferred Stock vote together as a single class on all matters, including the election of Distributing directors, except that holders of Distributing Common Stock, acting as a

single class, are entitled to elect a percent of the total number of Distributing directors (the “Director Vote”). Holders of Distributing Common Stock are entitled to b vote per share and holders of Distributing Class B Common Stock are entitled to c votes per share (this voting structure, together with the Director Vote, the “High-Vote/Low-Vote Structure”). Holders of Distributing Preferred Stock are entitled to d votes per share when voting together as a class with the Distributing Common Stock and Distributing Class B Common Stock.

As of Date 1, Shareholder owned, directly or indirectly, e percent of the outstanding Distributing Common Stock and all the outstanding Distributing Class B Common Stock. Shareholder’s Distributing stock represents f percent of the aggregate voting power (measured by the ability to elect directors) of all classes of Distributing stock outstanding.

As of Date 1, Person owned, directly or indirectly, g percent of the outstanding Distributing Common Stock. In addition, pursuant to a stockholders agreement, Person has an irrevocable proxy to vote all shares of Distributing Common Stock and Distributing Class B Common Stock held by Shareholder and its subsidiaries, except in the case of certain limited matters (the “Proxy Arrangement”). Under the Proxy Arrangement, and combined with Person’s personal holdings of Distributing Common Stock, Person has the ability to vote Distributing stock representing h percent of the aggregate voting power (measured by the ability to elect directors) of all classes of Distributing stock outstanding. The Proxy Arrangement will continue in effect after the Proposed Transactions.

Pursuant to authorizations passed by Distributing’s board of directors in Date 2 and Date 3, Distributing may repurchase up to i shares of Distributing Common Stock as part of an ongoing share repurchase plan. Under this plan, Distributing has repurchased j shares of Distributing Common Stock in open market transactions since Date 4, representing k percent of the Distributing Common Stock outstanding (the “Completed Open Market Repurchases”). Neither Person nor Shareholder participated in the Completed Open Market Repurchases. Accordingly, the Completed Open Market Repurchases have caused the voting power (measured by the ability to elect directors) represented by Person’s and Shareholder’s Distributing common stock to increase by l percent in the aggregate. Distributing expects to enter into additional transactions pursuant to its share repurchase plan that could result in Distributing repurchasing up to m additional shares of Distributing Common Stock prior to the Distribution, representing an additional n percent of the Distributing Common Stock outstanding (the “Additional Open Market Repurchases”, and together with the Completed Open Market Repurchases, the “Open Market Repurchases”). Neither Person nor Shareholder is expected to participate in the Additional Open Market Repurchases. Accordingly, the Additional Open Market Repurchases could cause the voting power (measured by the ability to elect directors) represented by Person’s and Shareholder’s Distributing common stock to increase by up to an additional o percent in the aggregate, or a total of

p percent in the aggregate when considered in combination with the Completed Open Market Repurchases.

Distributing currently has outstanding q dollars of r percent senior notes due in Date 5, s dollars of t percent senior notes due in Date 6 and u dollars of v percent senior notes due in Date 7 (the “Distributing Notes”).

Sub 1, a State B limited liability company, is an existing wholly owned direct subsidiary of Distributing and is engaged, through its subsidiaries, in Business B. Sub 1 has elected to be treated as an association taxable as a corporation for Federal income tax purposes under § 301.7701-3(c).

Sub 2, a State A limited liability company, is an existing wholly owned direct subsidiary of Sub 1 and is engaged, through its subsidiaries, in Business B. Sub 2 is an entity disregarded as separate from Sub 1 for Federal income tax purposes under § 301.7701-3(b).

Financial information has been received indicating that Business A and Business B each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

For what are represented to be valid business purposes and to effect the Distribution, Distributing proposes the following steps which have been partially consummated:

PROPOSED TRANSACTIONS

- (i) On Date 8, Distributing formed Controlled, a State A corporation.
- (ii) The outstanding shares of Distributing Preferred Stock will be cashed out through a merger of a newly formed, wholly owned subsidiary of Distributing with and into Distributing (the “Preferred Stock Merger”).
- (iii) Sub 1 will cancel or cause to be cancelled existing intercompany receivables (the “Intercompany Receivables”) that Distributing owes Sub 1 or Sub 2 (the “Intercompany Receivables Distribution”). In addition, Sub 1 will borrow w dollars from one or more unrelated third parties (which borrowing will not be guaranteed by Distributing) and will distribute the borrowing proceeds as well as an additional amount of cash (possibly financed through additional third party borrowing, which borrowing will not be guaranteed by Distributing) to Distributing (the “Cash Distribution”).
- (iv) Distributing will contribute all of the membership interests in Sub 1 to Controlled (the “Controlled Contribution”).
- (v) Distributing will consummate a one-for-two reverse stock split (the “Reverse Stock Split”) in connection with the Distribution to adjust the number of shares of

Distributing Common Stock and Distributing Class B Common Stock outstanding. In the Reverse Stock Split, Distributing will issue (a) one share of new common stock ("Stock Split Distributing Common Stock") in exchange for two shares of outstanding Distributing Common Stock and (b) one share of new Class B common stock ("Stock Split Distributing Class B Common Stock") in exchange for two shares of outstanding Distributing Class B Common Stock. No fractional shares of Stock Split Distributing Common Stock or Stock Split Distributing Class B Common Stock will be issued in the Reverse Stock Split. Instead, a transfer agent will aggregate all fractional shares of Stock Split Distributing Common Stock that Distributing shareholders would otherwise be entitled to receive and, as soon as practicable following the Distribution, (a) sell the fractional shares in the open market at prevailing market prices and (b) distribute to each Distributing shareholder otherwise entitled to receive a fractional share of Stock Split Distributing Common Stock cash in an amount equal to the shareholder's proportionate interest in the net proceeds from such sale. Any cash in lieu of fractional shares of Stock Split Distributing Class B Common Stock will be provided directly by Distributing as determined by its board of directors.

- (vi) The outstanding shares of Controlled Common Stock held by Distributing will be recapitalized into shares of Controlled Common Stock and Controlled Class B Common Stock (the "Controlled Recapitalization"), reflecting the High-Vote/Low-Vote Structure. The number of shares of Controlled Common Stock and Controlled Class B Common Stock outstanding after the Controlled Recapitalization will, in each case, equal the number of such shares to be distributed in the Distribution.
- (vii) Distributing will amend its amended and restated certificate of incorporation in accordance with the laws of State A, pursuant to which amendment: (a) each issued and outstanding share of Stock Split Distributing Common Stock will be reclassified into (i) $\frac{1}{2}$ share of common stock of Distributing with a different par value (the "New Distributing Common Stock"), and (ii) $\frac{1}{2}$ of a share of Series 1 mandatory exchangeable preferred stock of Distributing (the "New Distributing Series 1 Preferred Stock") and (b) each issued and outstanding share of Stock Split Distributing Class B Common Stock will be reclassified into (i) $\frac{1}{2}$ share of Class B common stock of Distributing with a different par value (the "New Distributing Class B Common Stock"), and (ii) $\frac{1}{2}$ of a share of Series 2 mandatory exchangeable preferred stock of Distributing (the "New Distributing Series 2 Preferred Stock") (collectively, the "Distributing Recapitalization").
- (viii) Immediately following the Distributing Recapitalization: (a) each $\frac{1}{2}$ of a share of New Distributing Series 1 Preferred Stock will, pursuant to its terms, automatically and immediately exchange into one share of Controlled Common Stock and (b) each $\frac{1}{2}$ of a share of New Distributing Series 2 Preferred Stock will, pursuant to its terms, automatically and immediately exchange into one share of Controlled Class B Common Stock (together with step (vi), the "Distribution"). No

fractional shares of Controlled Common Stock or Controlled Class B Common Stock will result from the Distribution. The Proxy Arrangements will be replicated with respect to the Controlled stock. The Distribution would be treated as a distribution to which section 355(e) applied if (a) the Additional Open Market Repurchases exceeded y shares of Distributing Common Stock and (b) the replication of the Proxy Arrangement with respect to the Controlled stock resulted or were deemed to result in an acquisition of stock for section 355(e) purposes. In addition, the Distribution would be treated as a distribution to which section 355(e) applied if each of the following transactions resulted or were deemed to result in an acquisition of stock for section 355(e) purposes: (a) the replication of the Proxy Arrangement with respect to the Controlled stock, (b) the Completed Open Market Repurchases (other than any such acquisitions of stock deemed to be by Person or Shareholder) and (c) except with respect to Person or Shareholder, the receipt of cash in lieu of fractional shares in connection with the Reverse Stock Split. The possible effects under section 355(e) described in the preceding two sentences have been specifically considered in issuing Ruling (8).

- (ix) It is intended that Controlled have z dollars of cash on hand immediately following the Distribution. The amount of cash actually held by Controlled at that time will be determined within aa days after the date of the Distribution. If the actual amount differs from the intended amount, a cash true-up payment will be made by Distributing to Controlled (or vice versa) to eliminate the disparity (the "Cash True-Up Payment"). In addition to the Cash True-Up Payment (which will be provided for under a separation agreement (the "Separation Agreement")), Distributing and Controlled and their respective affiliates may be required to make other payments after the Distribution pursuant to the Separation Agreement, a tax sharing agreement (the "TSA"), an employee matters agreement (the "EMA"), and/or a transition services agreement (the "TA") with respect to indemnity and other obligations that will have arisen in taxable periods beginning before the Distribution but will not be ascertainable until after the Distribution (such payments, together with the Cash True-Up Payment, the "Post-Distribution Payments").
- (x) Distributing will deposit any Cash True-Up Payment received from Controlled into a segregated account, pending transfer of the Cash True-Up Payment to creditors and/or shareholders of Distributing, in each case, pursuant to the plan of reorganization.
- (xi) Controlled may adopt a shareholder rights plan (the "Controlled Rights Plan") prior to the Distribution. Under the Controlled Rights Plan, a preferred stock purchase right (a "Controlled Right") would trade together with each share of Controlled Common Stock and Controlled Class B Common Stock until and unless certain specified events occur.

REPRESENTATIONS

The following representations are made by Distributing with respect to the Distribution:

- (a) Indebtedness (if any) owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee or in any capacity other than that of a shareholder of Distributing.
- (c) The five years of financial information submitted on behalf of the Distributing separate affiliated group as defined in section 355(b)(3)(B) (the "Distributing SAG") is representative of present operations of Business A and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted. The Distributing SAG will have been the principal owner of the goodwill and significant assets of Business A throughout the five-year period ending on the date of the Distribution and will continue to be the owner following the Distribution.
- (d) The five years of financial information submitted on behalf of the Controlled separate affiliated group as defined in section 355(b)(3)(B) (the "Controlled SAG") is representative of the present operations of Business B, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted. Distributing (through Sub 1) will have been the principal owner of the goodwill and significant assets of Business B throughout that part of the five-year period that precedes the Controlled Contribution, and the Controlled SAG will be the principal owner following the Controlled Contribution and Distribution.
- (e) Neither Business A nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (f) Neither Business B nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (g) Following the Distribution, the Distributing SAG and the Controlled SAG will continue the active conduct of Business A and Business B, respectively, independently and with its separate employees.

- (h) The Distribution is being carried out for the following corporate business purposes:
 - (i) to cause the aggregate value of the stock of Distributing and Controlled to exceed the pre-distribution value of Distributing's stock, and (ii) to better incentivize Distributing and Controlled's respective employees. The Distribution is motivated, in whole or substantial part, by one or more of these purposes.
- (i) The Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (j) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing each will equal or exceed the sum of (i) the liabilities assumed (as determined under section 357(d)) by Controlled and (ii) the total amount of money and the fair market value of any other property (within the meaning of section 361(b)), if any, received by Distributing from Controlled and transferred to Distributing's creditors in connection with the reorganization. The liabilities assumed (as determined under section 357(d)) by Controlled in the transaction will have been incurred in the ordinary course of business and will be associated with the assets being transferred.
- (k) The total fair market value of the assets transferred to Controlled by Distributing in the Controlled Contribution will exceed the sum of (i) the amount of any liabilities assumed (as determined under section 357(d)) by Controlled in connection with the Controlled Contribution, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the Controlled Contribution, and (iii) the amount of money and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing in connection with the Controlled Contribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Distribution.
- (l) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution, except for payables arising under transitional arrangements or otherwise in the ordinary course of business.
- (m) Immediately before the Distribution, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account, if any, with respect to the Controlled stock or the stock of any direct or indirect subsidiary of Controlled will be included in income immediately before the Distribution to the extent required by applicable regulations (see § 1.1502-19). At the time of the Distribution, Distributing will not have an excess loss account in the stock of Controlled or the stock of any direct or indirect subsidiary of Controlled.

- (n) Except for any payments that will be made in connection with the Separation Agreement, the TSA, the EMA, or the TA, which may be based on cost or cost-plus arrangements, payments made in connection with any continuing transactions between Distributing or any of its subsidiaries and Controlled or any of its subsidiaries will be for fair market value (taking into account any barter arrangements) based on terms and conditions arrived at by the parties bargaining at arm's length.
- (o) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (p) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (q) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (r) Excluding any acquisitions of stock that result from or are deemed to result from (a) the replication of the Proxy Arrangement with respect to the Controlled stock, (b) the Open Market Repurchases (other than any such acquisitions of stock deemed to be by Person or Shareholder) and (c) except with respect to Person or Shareholder, the receipt of cash in lieu of fractional shares in connection with the Reverse Stock Split, the Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50 percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (s) Immediately after the transaction (as defined in section 355(g)(4)), either (i) no person will hold a 50 percent or greater interest (within the meaning of section 355(g)(3)) in Distributing or Controlled, (ii) if any person holds a 50 percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified

investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation immediately before the Distribution, or (iii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

- (t) Any payment of cash in lieu of fractional shares of Stock Split Distributing Common Stock or Stock Split Distributing Class B Common Stock in the Reverse Stock Split is solely for the purpose of avoiding the expense and inconvenience to Distributing of issuing and maintaining fractional shares and will not represent separately bargained-for-consideration. It is intended that the total cash paid in the Reverse Stock Split to shareholders in lieu of fractional shares of Stock Split Distributing Common Stock and Stock Split Distributing Class B Common Stock will not exceed one percent of the fair market value of the Distributing stock issued in the Reverse Stock Split. The fractional share interests of each Distributing shareholder will be aggregated, and it is intended that no shareholder will receive cash in an amount equal to or greater than the value of one share of Stock Split Distributing Common Stock and/or Stock Split Distributing Class B Common Stock, as applicable.
- (u) In the event Controlled adopts the Controlled Rights Plan, the Controlled Rights will be the type of rights described in Rev. Rul. 90-11, 1990-1 C.B. 10.
- (v) The Distributing Recapitalization, the Controlled Recapitalization and the Reverse Stock Split will each qualify as a reorganization under section 368(a)(1)(E).
- (w) Sub 1's adjusted basis in the Intercompany Receivables equals the adjusted issue price and fair market value of such Intercompany Receivables, and such adjusted basis, adjusted issue price and fair market value all will be equal immediately before the Intercompany Receivables Distribution.
- (x) Within 12 months following the date of the Distribution, Distributing will transfer the Cash True-Up Payment received from Controlled, if any, to creditors and/or shareholders of Distributing, in each case, pursuant to the plan of reorganization.
- (y) The aggregate amount of Distributing debt repaid with the proceeds from the Cash True-Up Payment (if any) will not exceed the weighted quarterly average of Distributing's debt owed to unrelated third parties for the 12-month period ending on the close of business on the last full business day before the date on which Distributing's board of directors initially discussed the Distribution.

RULINGS

Based solely on the information submitted and the representations set forth above, we rule as follows:

- (1) The Controlled Contribution, followed by the Distribution, will qualify as a reorganization under section 368(a)(1)(D). Each of Distributing and Controlled will be a party to the reorganization under section 368(b).
- (2) No gain or loss will be recognized by Distributing on the Controlled Contribution (sections 357(a) and 361(a)).
- (3) No gain or loss will be recognized by Controlled on the Controlled Contribution (section 1032(a)).
- (4) The basis of each asset received by Controlled will equal the basis of that asset in the hands of Distributing immediately before its transfer (section 362(b)).
- (5) The holding period of each asset received by Controlled will include the period during which that asset was held by Distributing (section 1223(2)).
- (6) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the shareholders of Distributing on the Distribution (section 355(a)(1)).
- (7) Provided that, at the time of the Distribution, any Controlled Rights remain contingent, non-exercisable, and subject to redemption if issued, the receipt of such rights by Distributing and its shareholders will not be a distribution or receipt of property, an exchange of stock or property (either taxable or nontaxable), or any other event giving rise to the realization of gross income by Distributing, Controlled, or any of the Distributing shareholders (Rev. Rul. 90-11, 1990-1 C.B. 10).
- (8) No gain or loss will be recognized by Distributing on the Distribution (section 361(c)(1)).
- (9) The aggregate basis of the stock of Distributing and the stock of Controlled in the hands of a shareholder of Distributing will equal the aggregate basis of the stock of Distributing held immediately before the Distribution, allocated between the stock of Distributing and the stock of Controlled in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (sections 358(b)(2) and 358(c)).
- (10) The holding period of the stock of Controlled received by a shareholder of Distributing in the Distribution will include the holding period of the Distributing stock with respect to which the distribution is made, provided such Distributing stock is held as a capital asset by the shareholders of Distributing on the date of the Distribution (section 1223(1)).
- (11) Earnings and profits will be allocated between Distributing and Controlled in accordance with section 312(h)(10) and. §§ 1.312-10(a) and 1.1502-33(e)(3).

- (12) A shareholder who receives cash in lieu of fractional shares of Stock Split Distributing Common Stock in the Reverse Stock Split will recognize gain or loss measured by the difference between the basis of the fractional share received and the amount of cash received (section 1001). Any gain or loss will be treated as capital gain or loss, provided the stock was held as a capital asset on the date of the Reverse Stock Split (sections 1221 and 1222).
- (13) The Cash Distribution and the Intercompany Receivables Distribution will each be a distribution within the meaning of section 301.
- (14) No income, deduction, gain, or loss will be recognized by Distributing or Controlled upon the extinguishment of the Intercompany Receivables.
- (15) Following the Distribution, Controlled will not be a successor of Distributing for purposes of section 1504(a)(3). Therefore, Controlled and its direct and indirect subsidiaries that are "includible corporations" (within the meaning of section 1504(b)) and satisfy the ownership requirements of section 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated federal income tax return with Controlled as the common parent.
- (16) No gain or loss will be recognized by Distributing upon receipt of the Cash True-Up Payment, if any, from Controlled, provided the conditions set forth in representations (x) and (y) are satisfied (section 361(b)(1)(A) and (b)(3)).
- (17) Payments made between Distributing and Controlled and their respective affiliates (including the Post-Distribution Payments), regarding liabilities, indemnities or other obligations that (i) have arisen or will arise for a taxable period ending on or before the Distribution or for a taxable period beginning before and ending after the Distribution and (ii) will not become fixed and ascertainable until after the Distribution will be treated as occurring immediately before the Distribution (see *Arrowsmith v. Comm'r.*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. We express no opinion about the tax treatment of the Proposed Transactions under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effect resulting from, the Proposed Transactions that is not specifically covered by the above rulings. In particular, we express no opinion regarding:

- (i) Whether the Distribution satisfies the business purpose requirement of § 1.355-2(b);

- (ii) Whether the Distribution is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see section 355(a)(1)(B) and § 1.355-2(d));
- (iii) Whether the Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in Distributing or Controlled (see section 355(e) and § 1.355-7), provided that for purposes of Ruling (8), we have assumed that any acquisitions of stock that result or are deemed to result from (a) the replication of the Proxy Arrangement with respect to the Controlled stock, (b) the Open Market Repurchases (other than any such acquisitions of stock deemed to be by Person or Shareholder) or (c) except with respect to Person or Shareholder, the receipt of cash in lieu of fractional shares in connection with the Reverse Stock Split are, in each case, acquisitions of stock that are part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the Distribution;
- (iv) The Federal income tax effect of the Preferred Stock Merger; and
- (v) Whether the Distributing Recapitalization, the Controlled Recapitalization and the Reverse Stock Split each will qualify as a reorganization under section 368(a)(1)(E).

One or more rulings given in this letter deal with issues that may be addressed in subsequent published guidance. See section 11 of Rev. Proc. 2011-1, 2011-1 I.R.B. 1, 49-52, regarding the circumstances, including published guidance, that may result in the revocation or modification of a ruling letter.

PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this ruling letter.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Mark J. Weiss
Reviewing Attorney, Branch 6
Office of Associate Chief Counsel (Corporate)